IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2955 OF 2005

Shri Krishna Divekar & Ors. ...Petitioners.
Vs.
Pune Cantonment Board, Pune & Ors. ...Respondents.
....
Mr. S. R. Atre with Mr. K.K. Waghmare for the Petitioners.
Mr. V. G. Mujumdar for Respondent No.1.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 18, 2006.

P.C.

Rule. Heard forthwith.

The Petitioner by the present petition has approached this Court to impugn the order dated 7th October 2004 in Appeal No.14 of 1997. By that order, the appeal preferred by the Petitioner was dismissed as barred by limitation.

The Petitioner in appeal preferred by him had also applied for condonation of delay. It was his case that the notice dated 30th August 1997 was actually received by him on 10th September 1997. The Petitioner preferred an appeal on 29th

September 1997 before the Cantonment Executive Officer. The Petitioner was informed that the appeal was not maintainable before that officer as the property was situated outside the notified area limit. In these circumstances, the Petitioner preferred an appeal before the present Appellate Body on 10th November 1997. It is, therefore, contended that on considering the provisions of the Cantonment Act, 1924, the time which the Petitioner took while bonafide contesting the proceedings before a forum which had no jurisdiction to hear the appeal, ought to be excluded.

The Petitioner has really not set out as to when he was intimated that the appeal was not maintainable. However, considering the facts and circumstances of the case and as the Petitioner was proceeding with the appeal and in fact filed an appeal in time though before an authority not competent within limitation, in our opinion that period between 29th September 1997 and filing of the appeal before the present Appellate Authority on 10th November 1997 has to be excluded. If it is so held, then the appeal filed was within limitation. Even otherwise the cause shown amount to a sufficient cause. Consequently, the impugned order dated 7th October 2004 is set aside. The Appellate Authority is

directed to hear the appellant on merits and dispose of the appeal within 16 weeks from today. Rule made absolute accordingly. No order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)